

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: SB 7022 OGSR/Proprietary Confidential Business Information

SPONSOR(S): Regulated Industries

TIED BILLS: **IDEN./SIM. BILLS:**

FINAL HOUSE FLOOR ACTION: 114 Y's 2 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

SB 7022 passed the House on April 28, 2021, as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on April 29, 2021.

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for proprietary confidential business information submitted by a voice communications services provider to the E911 Board, the Division of Telecommunications within the Department of Management Services, or the Department of Revenue as an agent of the E911 Board.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2021, if this bill does not become law, and revises the definition of "proprietary confidential business information" to remove trade secrets.

The bill does not appear to have a fiscal impact on state or local governments.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

The Emergency Communications Number E911 Act (E911 Act)

The Emergency Communications Number E911 Act (E911 Act) was established to create a statewide emergency telecommunications number system, providing users of voice communications services rapid and direct access to public safety and emergency agencies.⁵ The Communications Number E911 System Fund (the fund),⁶ reimburses counties and wireless providers⁷ for certain costs incurred in complying with the E911 Act.⁸ The fund is administered by the E911 Board (board).⁹ The fund is comprised of fees levied on subscribers pursuant to the E911 Fee¹⁰ and the Prepaid Wireless E911 Fee.¹¹

Providers must deliver the collected E911 fees to the board within 60 days of billing subscribers, along with a monthly report that includes data as to the number of subscribers within each county.¹² The fee

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ Section 365.172, F.S.

⁶ Section 365.173, F.S.

⁷ "Provider" or "voice communications service provider" is defined to mean any person or entity providing voice communications services, except that the term does not include any person or entity that resells voice communications services and was assessed the E911 fee authorized and imposed under the E911 Act by its resale supplier. Section 365.172(3)(dd), F.S.

⁸ Section 365.172(2)(b), F.S.

⁹ Section 365.172(2)(d) F.S. The E911 Board is overseen by the Division of Telecommunications within the Department of Management Services.

¹⁰ Section 365.172(8), F.S.

¹¹ Section 365.172(9), F.S.

¹² Section 365.172(8)(e), F.S.

must then be paid by the board into the State Treasury and accounted for in the fund on a monthly basis.¹³

As to the Prepaid Wireless E911 Fee, the provider collects the amount of the fee from the customers on each transaction performed within the state.¹⁴ The provider must then remit the fees collected in the previous month along with a fee return to the Department of Revenue (DOR).¹⁵ DOR then transfers the fees to the fund on a monthly basis.¹⁶

Public Record Exemption under Review

Current law provides a public record exemption for proprietary confidential business information submitted by a provider to the board, the Division of Telecommunications within the Department of Management Services (DMS), or DOR as an agent of the board.¹⁷ The term “proprietary confidential business information” is defined to include customer lists, customer numbers, individual or aggregate customer data by location, usage and capacity data, network facilities used to serve subscribers, technology descriptions, technical information, or trade secrets, including trade secrets as defined in s. 812.081(1)(c), F.S.,¹⁸ and the actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or by a provider’s employees, directors, officers, or agents.¹⁹

Both the E911 Fee report and the return filed for the Prepaid Wireless E911 Fees contain information considered to be proprietary confidential business information, falling within the public record exemption.²⁰ According to the Cellular Telecommunications and Internet Association (CTIA), the trade association for the wireless communications industry:

The E911 fee submission reports to the E911 Board contain E911 fee collections from customers separated by local county jurisdiction, which is “aggregate customer data by location,” and financial data from which aggregate customer data by location can be derived. Prepaid wireless E911 fee collections may contain vendor specific information. In addition, cost and technical information may have been submitted by one or more Members in support of affidavits seeking reimbursement from the E911 Board for implementation of E911 service.²¹

¹³ Section 365.173(1)(a), F.S.

¹⁴ Section 365.172(9)(c), F.S.

¹⁵ Section 365.172(9)(g), F.S.

¹⁶ Section 365.173(1)(b), F.S.

¹⁷ Section 365.174, F.S.

¹⁸ Section 812.081(1)(c), F.S., defines the term “trade secret” to mean the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

¹⁹ Section 365.174, F.S.

²⁰ See s. 365.172(8)(e), F.S.

²¹ Open Government Sunset Review Questionnaire, CTIA Response, October 8, 2020, (on file with the Government Operations Subcommittee).

CTIA explains that the information remitted is internal and cannot be obtained by any other means.²² They assert that the information submitted is competitively sensitive and disclosure could result in harm to the providers.²³

In 2016, the definition of “trade secret” in section 812.081(1)(c), F.S., was expanded to include financial information. As a result, the above-described public record exemption was reenacted to include the new definition of “trade secret” and is subject to the Open Government Sunset Review Act.

The 2016 public necessity statement²⁴ for the exemption provides that:

The Legislature recognizes that, in many instances, businesses are required to provide financial information for regulatory or other purposes to public entities and that disclosure of such information to competitors of those businesses would be detrimental to the businesses.²⁵

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2021, unless reenacted by the Legislature.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption for proprietary confidential business information submitted by a provider to the board, the Division of Telecommunications within DMS, or DOR as an agent of the board, and revises the definition of “proprietary confidential business information” to remove trade secrets.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

²² *Id.*

²³ *Id.*

²⁴ Article I, s. 24(c), Fla. Const., requires each public record exemption “state with specificity the public necessity justifying the exemption.”

²⁵ Chapter 2016-6, L.O.F.

None.

D. FISCAL COMMENTS:

None.